

ORIGINAL

DEPT. OF TRANSPORTATION
DISTRICT SECTION

BEFORE THE
DEPARTMENT OF **TRANSPORTATION**
WASHINGTON, D.C.

ATION 13 0211: 51

Joint Application of

DELTA AIR LINES, INC.

SWISSAIR, SWISS AIR TRANSPORT
COMPANY, LTD.

SABENA S.A., SABENA BELGIAN WORLD
AIRLINES, and

AUSTRIAN AIRLINES, ÖSTERREICHISCHE
LUFTVERKEHRS AG

for Approval of and Antitrust Immunity for
Alliance Agreements Pursuant to 49 U.S.C.
§§ 41308 and 41309

Docket OST-95-618' 33

COMMENTS OF THE
~~INTERNATIONAL AIR TRANSPORT ASSOCIATION~~

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November 13, 1995

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COMMENTS OF THE
INTERNATIONAL AIR TRANSPORT ASSOCIATION

The International Air Transport Association ("**IATA**"), a trade association representing the world's scheduled passenger and cargo air carriers, and an active party in Docket 46928, submits these comments in response to Order 95-9-27 (Sept. 25, 1995). In that Order, the Department asked the applicants in this docket to "**[d]iscuss** whether and to what extent a grant of the application would or should affect the joint applicants' participation in IATA, especially price coordination."

IATA believes that the question raised by Order 95-9-27 is one of general significance. In **IATA's** view, the emergence of marketing alliances among international air carriers is only one element of the competitive and dynamic international air

transportation market in which IATA tariff coordination plays its legitimate role. IATA Conferences do not provide a mechanism for the formation or operation of such alliances nor, as the joint applicants have pointed out, does the formation of such alliances affect carrier interest in participating in **IATA's** work.

Any attempt to analyze the overall public interest consequences of carrier alliances in the context of a single application risks either unduly expanding that docket and unfairly delaying its resolution or applying a far too narrow perspective to an issue of global significance. Because the Department has another docket, Docket 46928, in which all issues relating to the approval and immunity of IATA tariff coordination are presented, and where scores of parties throughout the world are participating, principles of sound administration and procedural due process clearly call for investigating any possible impact of marketing alliances on tariff coordination in that docket. **See generally** 2 Davis, Administrative Law Treatise (2d ed.) §§ 7:24-29 (Where "the larger aspects" of a program are at stake, an agency should use procedures suited to establishing "a coherent program" rather than relying on "piecemeal actions.") Kent Farm Co. v. Hills, 417 F. Supp. 297, 302 (D.D.C. 1976).^{1/}

^{1/} Given a proper forum, IATA believes that the Department will be shown that marketing alliances create, if anything, a greater need for IATA tariff coordination's interlining function. Passengers, shippers and non-alliance carriers must continue to have access to the interline system to maximize competition and the operations of alliance carriers should not be excluded from that system. See, infra pp. 6-7.

Thus, IATA respectfully requests that the Department withdraw from this docket issues relating to continued participation by alliance carriers in IATA tariff coordination and resolve those issues in Docket 46928.

I. PROCEDURAL BACKGROUND

A. Scope of Docket 46928.

On May 7, 1990, IATA filed in Docket 46928 a Part 303 application for the approval of revised Traffic Conference Provisions pursuant to §§ 412 and 414 of the Federal Aviation Act.^{2/} By November 30, 1990, 26 carriers and carrier associations and 23 foreign governments and multilateral organizations had filed comments on IATA's application addressing every aspect of the Conference process and stressing its contribution to interline service.

Thereafter, the Department continued to receive additional comments, "given the complexity of [the] issues and their importance to carriers and governments around the world. . . ."^{3/} The DOT then established a final comment date of October 9, 1992.^{4/} Although the Department has issued no further Orders in Docket 26928, there is no apparent barrier to reopening the

^{2/} Now codified at 49 U.S.C. §§ 41309 and 41308.

^{3/} Order 92-8-9 (Aug. 4, 1992), at 4.

^{4/} By this date, the record contained comments from multilateral organizations representing 102 nations and separate comments from 31 nations.

comment period to examine in further detail the impact of marketing alliances on the IATA Conference function.

B. The Status of Docket OST-95-618.

In the instant docket, the DOT is examining only a single alliance application. In response to that filing, it has asked the joint applicants to "[d]iscuss whether and to what extent a grant of the application would or should affect the joint applicants' participation in IATA, especially price coordination."^{5/} They have timely responded as follows:

The Joint Applicants do not believe that the grant of the Application would or should affect their participation in IATA, just as approval/immunity did not affect the participation of KLM and Northwest. Those two carriers continue to participate in the Traffic Conferences after having received antitrust immunity, and their fares have remained very competitive as demonstrated in Exhibit 12 of the Joint Application. The transatlantic market is the most competitive in the world, and IATA has not impeded price competition in U.S.-Europe service. Carriers can and do act independently with respect to the establishment of fares in the U.S.-Europe market.

IATA participation is important primarily because of its key role in the development of interline fares. Interline fares are very important in maintaining flexibility for passengers who (1) want to buy a ticket and make a reservation on airline Y for one segment while buying the whole journey on airline X or (2) want to change reservations from airline X to airline Y. In the absence of the IATA interline system, carriers would be foreclosed from providing this consumer service.

^{5/} Order 95-9-27 (Sept. 25, 1995).

Other than the interline issue, however, the Joint Applicants believe that the Alliance (once approved and immunized) together with other current and future alliances will render the IATA Traffic Conferences increasingly less relevant.

II. CONSIDERATION OF CONTINUED ALLIED CARRIER PARTICIPATION IN IATA TRAFFIC CONFERENCES IN THIS PROCEEDING WOULD BE UNFAIR TO IATA, ITS MEMBERS AND THEIR GOVERNMENTS

Putting at issue in this Part 303 proceeding the allied carriers' continued right to participate in IATA Traffic Conferences would deprive all participants in Docket 46928, including numerous foreign air carriers and governments, of their right to protect their interests in tariff coordination. The impact of carrier commercial alliances on the IATA Traffic Conferences is a broad economic and political issue that will be addressed in Docket 46928. It should not be taken up piecemeal in response to specific carrier applications while that proceeding is underway.

In the IATA proceeding, the Department has long since recognized the **"the** importance of a well-developed record on which to base a decision, including an understanding of ongoing economic and regulatory developments in Europe and **elsewhere."**^{6/} Accordingly, it has exercised considerable discretion under Part 303 to solicit the participation of foreign governments and intergovernmental organizations in cooperation with the State Department, and has received the views of many foreign air

^{6/} Order 92-8-9 (Aug. 4, 1992), at 4.

carriers and air carrier organizations. It goes without saying that all these participants have a clear expectation that their interests regarding continued approval and immunity for the IATA Traffic Conferences will be adjudicated in that proceeding.

The record in Docket 46928 is substantially complete. The kinds of issues raised by carrier commercial alliances are no different from those that have already been **briefed**.^{1/} Nevertheless, that docket can be used to solicit such additional comments as the Department may deem appropriate.

In Docket 46928, IATA has demonstrated that tariff coordination provides a unique multilateral opportunity for smaller country carriers and new entrant carriers to achieve and maintain interline status for their services, thus enabling them to compete against the direct services of larger, **better-** established carriers on a joint-carrier basis. IATA believes that the essential role of tariff coordination in lowering the barriers to entry and facilitating joint-carrier competition are of substantial benefit to the travelling public in terms of service options and to small nations (many of which have only recently achieved statehood) seeking to establish national flag carriers. **IATA's** position has been universally supported by foreign carriers, foreign governments and multilateral

^{1/} IATA specifically addressed the impact of carrier commercial alliances on the Conferences and tariff coordination at pages 31-34 of its October 19, 1992 response to comments submitted by the Department of Justice.

organizations of carriers and states. And, indeed, the importance of tariff coordination for interlining has again been stressed in the response of the applicants in this docket.

IATA perceives nothing in the nature of the commercial alliances, such as the one being put forward by Delta, Austrian, Sabena and Swissair, which detracts from the continued need for tariff coordination to make international interline competition feasible and to assist new entry into the marketplace by smaller foreign carriers. If anything, the development of **closely-**integrated marketing alliances would seem to underscore the importance of the Conferences in maintaining the pro-competitive interline system, particularly for the dozens of existing carriers and new entrants that are not part of such alliances. Accordingly, any action taken in this docket to deny such carriers interline access through the Conference mechanism would be unfair and cannot be reconciled with the Department's obligation to engage in orderly decisionmaking. Consideration of this question properly resides in Docket 46928.

III. CONCLUSION

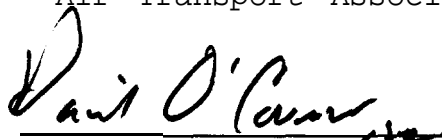
For the reasons stated above, IATA respectfully requests that the Department withdraw from consideration in the instant docket the question whether approval of the application should affect the right of the applicant carriers to participate in IATA

tariff coordination. That question should be addressed, if necessary, together with the broader issues in Docket 46928.

Respectfully submitted,



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November 13, 1995

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the International Air Transport Association has been served by first class mail, postage-prepaid, upon the persons listed below, this 13th day of November, 1995.

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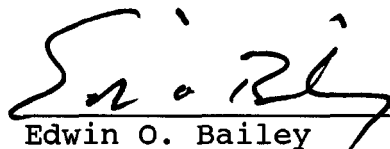
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